(a) under section 24 of the Evidence Act a confession is irrelevant only if it had been caused by inducement, threat or promise proceeding from a person in authority and since PW2 was not a person in authority section 24 does not apply in this case even if it were shown that PW2 had made inducement, threat or promise to induce the offender to make confession; and

(b) the court is not to presume that a confession was not made voluntarily in the absence of evidence to that effect.

I agree with the learned Deputy Public Prosecutor that there is no evidence to show that PW2 was a person in authority in relation to the offender. Evidence merely shows that PW2 and the offender were fellow workers in the perm parlour. Therefore section 24 has no application. Even if there was evidence of inducement, threat or promise by PW2 to the offender, her admission to PW2 would be admissible, but in that event the court should of course consider how much weight should be attached to an admission which was obtained as the result of the inducement, threat or promise. In view of my concurrence with the learned Deputy Public Prosecutor's submission on the first point, it is not necessary for me to deal with his second point.

Under section 422 of the Criminal Procedure Code no finding or order made by a lower court is to be reversed or altered on account of improper rejection of evidence unless such improper rejection has occasioned a failure of justice. I hold that the present case is one in which the rejection of the offender's admission has occasioned a failure of justice in that if the admission had been admitted the court would probably have found the offender guilty instead of acquitting her. I therefore order that the acquittal of the offender be set aside.

The next question to consider is whether an order should be made to send this case back to the lower court for continuation of trial. I am not sure whether if this case is sent back and the time arrives for continuation of hearing in the lower court, the same learned President who has heard this case would still be officiating in the court, or whether the prosecution witnesses would still be available in the event of the defence wishing to cross-examine them further. Therefore in my opinion it would be better to order that the offender be discharged, such discharge not amounting to acquittal, and the prosecution should have liberty to bring fresh proceedings against the offender if it so wishes, and I order accordingly.

I take this opportunity to make an observation on what in my opinion was an improper admission of irrelevant evidence in this case. I refer to the statements of the prosecution witnesses referring to the alleged theft by the offender of a shirt on a different occasion. Even if no objection was raised against admission of irrelevant matters, the learned President should have not allowed them to go on record in evidence.

*Order accordingly.*

Solicitor: *Soo Wai Sun & Co.*

## TEMENGGONG SECURITIES LTD. & ANOR. v. REGISTRAR OF TITLES, JOHORE & ORS.

**[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Ong Hock Sim F.J.) May 24, 1974]**

**[Kuala Lumpur — Federal Court Civil Appeal Nos. 104, 109 and 110 of 1973]**

*Land Law — Caveat — Whether rightly and properly entered — Agreement for sale of land — Memorandum of transfer presented for registration — Judgments obtained by Government against vendors for income tax — Contingent claim by Revenue — Prohibitory order entered — Instruments rejected on ground that Registrar's caveat had been entered — National Land Code, ss. 320, 321, 336 and 417.*

In this case the appellants had entered into an agreement for the purchase of certain lands belonging to a private company. The memorandum of transfer was presented for registration on December 14, 1972. On December 19, 1972 the Government of Malaysia obtained judgments against the vendor for income tax and pursuant thereto, the Government obtained two prohibitory orders, which were entered on the register of documents of title. On March 15, 1973, the appellants were informed that the instruments had been rejected on the ground that the Registrar's caveat had been entered against the land. The appellants applied for an order to direct the Registrar of Titles to cancel the caveat and register the transfer. This was dismissed in the High Court and the appellants appealed to the Federal Court.

**Held,** allowing the appeal: (1) the vendors having parted with their interest in the lands to the appellants were bare trustees and had no interest in the land over which a valid caveat could be lodged;

(2) as the caveat was wrongly entered, the Registrar ought to have registered the documents presented and the registering authority must therefore be ordered to accept and register the documents presented.

**[Editorial Note:** The Registrar of Titles' application for conditional leave to appeal to His Majesty the Yang Dipertuan Agung and for stay of execution was refused by the Federal Court on August 19, 1974.]

*Cases referred to:-*

(1) *Lysaght* v. *Edwards* (1876) 2 Ch. D. 499 at p. 506.
(2) *Williams* v. *Greatrex* [1957] 1 W.L.R. 31 at p. 36.
(3) *Mills* v. *Haywood* (1877) 6 Ch. D. 196, 202-3.
(4) *Bachan Singh* v. *Mahinder Kaur* [1956] M.L.J. 97 at p. 98.
(5) *Karuppiah Chettiar* v. *Subramaniam* [1971] 2 M.L.J. 116 at p. 117.

FEDERAL COURT.

*R. C. Hoffman* (*Wong Kim Fatt* with him) for the appellants.

*Haji Mohamad Eusoff bin Chin,* Legal Adviser, Johore for the respondent in F.C.C.A. 104 of 1973.

*Zulkifli bin Mahmood* (Senior Federal Counsel) for the respondents in F.C.C.A. 109 and 110 of 1973.

**Ong Hock Sim F.J.** (delivering the judgment of the Court): We propose to deal with these three appeals together. As agreed by Encik Zulkifli bin Mahmood on behalf of the Inland Revenue in his Written Submission to the Court in F.C. Civil Appeals Nos. 109 and 110 of 1973, they "refer to the same subject matter" and "the respondent had no objection" to all the appeals being heard at the same time.

The court is of opinion that if the decision is in favour of the appellants in Civil Appeal No. 104 of 1973, then it must follow that the prohibitory orders registered on December 27, 1973 would be ineffective by reason of the presentation of the Memorandum of Transfer and associated documents on December 14, 1973 and ought therefore to be set aside.

Civil Appeal No. 104 of 1973 is concerned with the validity of the Registrar's caveat entered on October 11, 1972 in Serial No. 156/72, Registrar's caveat Vol. 38, Fol. 149. This caveat was lodged pursuant to a letter from Inland Revenue dated October 2, 1972 (page 34) to the effect that the Penolong Pengarah Hasil Dalam Negeri, Johore Bahru, had requested the Pendaftar Hak Milek, Johore to enter a Registrar's caveat in respect of the lands stated in that letter under section 320(1)(b) of the National Land Code for protecting the interests of the Federation.

The facts need but be briefly stated. On August 30, 1972, the first appellant entered into an agreement with Li-Ta Company (Private) Limited, a company incorporated in the Republic of Singapore (hereinafter called the vendors) for the purchase of certain lands set out in the Schedule thereto in area 5,222 acres 3 roods 32 poles more or less, together with the buildings, plant, machinery and vehicles as specified in the provisional inventory at a total price of dollars six million ($6,000,000). Completion date was on or before September 30, 1972. On September 22, 1972 the first appellants and their nominees, the second appellants, paid the full purchase price to the vendors which executed due transfers of the lands in favour of the second appellants, the nominees of the first appellants, and gave delivery of the issue documents of title and two Discharges of Charge to their solicitors. On the same date, possession of the said lands was given to the second appellants. On December 14, 1972 the Memorandum of Transfer and the titles and discharges were presented for registration, after adjudication for stamp duty purposes, (being registration No. 8401/72 in File of Transfer Vol. 534, Fol. 52). On December 19, 1972 the Government of Malaysia obtained two judgments against the vendors in Civil Suits Nos. 116 and 117 of 1972 in the High Court at Muar for income tax due from the vendors to the Comptroller of Inland Revenue, Malaysia. Pursuant thereto, the Government obtained two prohibitory orders, one entered on the register documents of title to 7 of the 9 pieces and the other on the remaining 2 pieces. On March 15, 1973, the appellants were informed that the instruments had been rejected on the ground that the Registrar's caveat had been entered against the 9 pieces of land on October 11, 1972 in Vol. 38 Folio 149. By Originating Motion No. 4 of 1973 dated June 12, 1973 the appellants applied for an Order directing the respondent (the Registrar) to cancel the caveat and to register the transfer and discharges. This was dismissed on August 23, 1973, hence this appeal.

The main, and we consider, the most cogent ground of appeal, is whether the caveat was rightly and properly entered. It had been entered pursuant to a letter received dated October 2, 1972 from the Inland Revenue to the effect that the income tax liability of the vendors for future years would be increased and that, in order to avoid payment of such tax, the vendors had sold and were intending to sell other lands, and it was necessary, to stop the lands being transferred, to enter a caveat without delay. As the Legal Adviser appearing on behalf of the Registrar of Titles said: "The Federation Government's *interest* in this case is simply the collection of a debt due to it by the proprietor of the 9 lots of land which are now affected by the Registrar's caveat". This is reiterated by Cik Zulkifli bin Mahmood on behalf of the Revenue that:

> "Sometime in September 1972 the Inland Revenue Department became aware that Li Ta was seriously negotiating for the sale of its landed properties with a view to avoiding payment of its income tax. The respondent was concerned with the collection of debts, that is, tax due and payable by Li Ta and if its landed properties are disposed of, the chances of recovering the debts could be jeopardized, as Li Ta, a foreign company, has no more assets in this country.
>
> To collect the debts and to protect the *interests* of the Government, it was found necessary to prevent any dealing in the 9 (nine) pieces of land belonging to Li Ta until such time as the debts due and payable were settled. Consequently a request was made to the Registrar of Land Title, Johore, for the lodging of a Registrar's caveat under section 320(1)(b)(i) of the National Land Code. The Registrar's caveat was registered on 11.10.1972 forbidding the registration of any instrument of dealing in respect of the said 9 (nine) pieces of land."

This caveat was lodged pursuant to section 320(1)(b) [see page 35] and the court made it clear to respondent's counsel that it was not prepared to entertain any allegations at this appeal that the Registrar's caveat might have been entered *"for the prevention of fraud or improper dealing"* under section 320(1)(a) as no such allegations were made and there was not a jot of evidence of impropriety or suspicion in connection with the purchase by the appellants. We will consider section 320(1)(b). Much wind was expelled on the significance of the plural "interests" in that section as distinct from the singular in section 323, when speaking of a registrable interest. We fail to see when speaking of "interests" of the bodies or persons specified in section 321(1)(b)(i) and (ii) that word could ever have been drafted in the singular. Section 4(3) of the Interpretation Act 1967 expressly stipulates "words and expressions in the singular include the plural, and words and expressions in the plural include the singular." We do not think therefore there is any merit in this argument that the court should therefore construe the word in its widest possible sense to embrace any benefit or advantage that could be given to the Revenue. Fiscal legislation has always been subject to the strictest construction. What "interests of the Federation" that need protection must and can only be concerned with interests the Federation had, as against the person or body against whom such protection is sought. Have the vendors any further rights in the lands in respect of which the caveat has been lodged which can prevail over the rights of the purchasers who have paid the full consideration therefor and obtained possession thereof prior to the lodgment of the caveat? In our view there can be no doubt as to the position in law. As was said by Jessel M.R. in *Lysaght* v. *Edwards*: (1)

> "... the effect of a contract for sale has been settled for more than two centuries; certainly it was completely settled before the time Lord Hardwicke, who speaks of the settled doctrine of the court as to it. What is that doctrine? It is that the moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase-money, a charge or lien on the estate for the security of that purchase-money, and a right to retain possession of the estate until the purchase-money is paid, in the absence of express contract as to the time of delivering possession."

I would quote first the headnote to *Williams* v. *Greatrex*: (2)

"**Held,** (3) That the purchaser, having paid the deposits on and having entered into possession of the land, became the equitable owner of the land under a contract binding on the vendor such that the vendor could not now object to specific performance on the ground of laches unless he could show that he had not acquiesced in the purchaser's acts of possession or that the purchaser had abandoned the contract; and that the evidence showed sufficient acquiescence by him and no abandonment by the purchaser. Accordingly, despite the lapse of time, the purchaser was entitled to specific performance on payment of the balance of the price and interest thereon for the intervening years."

Denning L.J. said in that case:

"If he wished to exclude the purchaser, he ought to have taken possession himself. He never did so. I am quite clearly of opinion that, as long as the purchaser remained in possession under a contract which entitled him to be there, he had an equity which the courts will protect. There was no need for him to claim specific performance in order to give him a right to be there. Laches or delay is not a bar to this action."

In a concurring judgment Hodson L.J. (as he then was) cited with approval Cotton L.J. in *Mills* v. *Haywood*[3] where his Lordship said:

"In such a case, as, e.g., where the purchaser in possession has no right or title to such possession except as purchaser, his possession is an assertion on his part of his right under the contract of purchase, and acquiescence in his possession is a recognition by the vendor of this right."

The law is clear that the vendors, after receipt of the full purchase price and surrender of possession of the lands to the appellants are bare trustees for the appellants of the said land and it must consequently follow, as night must day, that the vendors have no *interest* in the lands which can be the subject matter of a caveat. Section 320 speaks of entry of a caveat in *respect of any land* wherever desirable for protecting the interests of the Federation. It does not, in our view, extend to a contingent claim, or a right to execution thereafter, solely by reason of the fact that the Federation is interested in the collection of a debt, however it may be deemed to be such upon service of a notice of assessment and thereafter deemed due and payable. What is being claimed is not some right or interest *in respect of the lands* to be caveated but a mere assertion of contingent claim to a debt. Priority, as may be noted in many laws, is granted to the Government for its claims against the debtor over other claimants or creditors, making the *property of the debtor* a first charge for satisfaction of those claims. But can it be maintained with any legal justification that these lands, after September 22, 1972 were still *property* of the debtor available for satisfaction of those claims? Have the vendors, now bare trustees for the purchasers, any interest in the lands which can be caveated? As Thomson J. (as he then was) said in *Bachan Singh* v. *Mahinder Kaur*: [4]

"To my mind, many of the difficulties which appear to arise in these cases would not arise if we were to bear in mind throughout the distinction between rights *ad rem* or personal rights and rights *in rem* or real rights. Where there is a valid binding contract for the sale of land, the purchaser, when he has performed his side of the contract, acquires a right *ad rem* which is also a right *in personam*. In other words, he acquires a right to the land as against the vendor personally but not good against the world as a whole and, in due course, that right can become a real right good against the world as a whole on registration in accordance with the Land Code."

The validity of the contract between the appellants and the vendors has not been seriously challenged nor, in our view, can it be. What the Inland Revenue is saying is that the Government's contingent claim should be treated as a preferred claim and the purchasers should seek recovery of money paid in all good faith from the vendors, who might now perhaps be insolvent.

At the hearing of Civil Suits No. 116 and 117 of 1972 (F.C. Civil Appeals Nos. 109 and 110 respectively), Cik Zulkifli conceded:

"The applicants became the beneficial owners on 22.9.72. The Government of Malaysia acquired interest in Li-Ta Company right from date of notice of assessment served on the company or date of service of notice by virtue of section 103(1) of the Income Tax Ordinance, 1967. By virtue of section 106(1) debt may be recovered.

Refers to section 89 of the National Land Code. Submits that beneficial owner will take the land subject to liabilities. Submits that *Subramaniam's* can be distinguished from the present case."

I question the correctness of his contention that the Government of Malaysia acquired an interest in Li-Ta Company by virtue of section 103(1) of the Income Tax Act, 1967. As he admitted section 106(1) merely said such debt *may be recovered* and until judgment or execution cannot, and section 89 of the National Land Code does not, have the result that the beneficial owner take the land subject to liabilities.

We are in agreement with the majority view in *Karuppiah Chettiar* v. *Subramaniam*[5] where it was

"**Held:** (1) in this case Mohamed Sharjudin having sold his entire interest in the land and received payment in full held the legal estate only as a bare trustee for the respondent, who was the equitable owner;

(2) the appellant, as judgment creditor, could only take whatever interest the debtor had and in this case the debtor had parted with his whole interest in the land;

(3) the learned judge in this case was right in setting aside the prohibitory order as there was nothing which could be put up for sale."

Reading the judgment, we think, with respect, the learned judge misdirected himself that a private caveat and a Registrar's caveat should be differently treated. We also consider that the judge erred in deferring determination of the "question of whether or not the judgment debtors had any saleable interest in the property attached by the prohibitory orders". On the facts and on law, we are satisfied that though Li-Ta were judgment debtors of the Government after December 19, 1972, Li-Ta had no interest in the lands attached by the prohibitory orders, which cannot under section 336(3) of the Land Code have effect on any instrument presented *prior to the time from which the order takes effect.*

We are of the view that the vendors, having parted with their interest in the lands to the appellants, are bare trustees and have *no interest* in the land over which a valid caveat can be lodged. Respondent's counsel tried to make much of clause 1 of the Agreement of August 30, 1972 that "the vendor *shall sell* and the purchaser *shall purchase*" and that therefore no rights passed as the agreement was non-registrable and a non-statutory instrument capable of passing title to the appellants. He glossed over the fact that the vendors had done everything that was required of them to transfer the title and had thereby constituted themselves bare trustees for the appellants and had no other or further interest in the lands.

As we are of the view that the caveat was wrongly entered, we are also of opinion that the Registrar ought to have registered the documents when presented on December 14, 1972 and the prohibitory orders lodged on December 27, are therefore inconsequential and ineffective, and must be set aside.

We would allow the appeals with costs and set aside the orders of the learned judge. The prayers of the appellants in the Originating Motion No. 4 of 1973 and Civil Actions Nos. 116 and 117 are granted and pursuant to section 417(1) of the National Land Code we order that the registering authority do accept the transfer and associated documents presented on December 14, 1972 and cause all necessary entries and memorials to be made in the issue and register documents of title for the second appellants to be registered as proprietors of the lands freed from encumbrances. The deposit will be refunded to the appellants.

*Appeals allowed.*

Solicitors: *Allen & Gledhill.*

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## OH KENG SENG v. PUBLIC PROSECUTOR

**[A.Cr.J. (Hashim Yeop A. Sani J.) June 10, 1974]**
**[Seremban — Miscellaneous Criminal Application No. 2 of 1974]**

*Criminal Law and Procedure — Transfer of case — Criminal Procedure Code (F.M.S. Cap. 6), s. 417 — Object of section to ensure a fair and impartial trial — Exception to ordinary rule on jurisdiction venue — When power under section to be exercised.*

This was an application under section 417 of the Criminal Procedure Code for the transfer of the case. The affidavit of the applicant did not show that a fair and impartial trial could not be had in the court before which the applicant was charged.

**Held:** (1) the provisions of section 417 of the Criminal Procedure Code should be construed as an exception to the ordinary rule on jurisdiction and venue of hearing. The power of transfer contained therein should only be exercised if it appears to the court that not to do so may result in an unfair or unimpartial trial or otherwise appears to the court expedient in the interests of justice;

(2) in this case the application had no merit and must be dismissed.

CRIMINAL APPLICATION.

*Yeap Ghim Guan* for the applicant.

*Suleiman bin Hashim* (Senior Federal Counsel) for the respondent.

**Hashim Yeop A. Sani J.:** At the outset I would like to make a few general observations with regard to this application. First, the application is made under section 417 of the Criminal Procedure Code. It should be borne in mind that broadly speaking, the primary object of that section is to ensure a fair and impartial trial. I have examined the affidavit of the applicant and have found nowhere in the affidavit to show that a fair and impartial trial cannot be had in the court before which the applicant is charged. Secondly, section 417 of the Criminal Procedure Code should be construed as an exception to the ordinary rule on jurisdiction and venue of hearing. The power of transfer under this section should in my view be exercised only if it appears to the court that not to do so may result in an unfair or unimpartial trial or otherwise appears to the court expedient in the interest of justice. Thirdly, an offence of sedition under section 4 of the Sedition Act, 1948 is an ordinary criminal offence which should normally be tried in the ordinary court of appropriate jurisdiction. The fact that a politician is involved by itself alone should not alter the position. The assurance given by the Hon'ble Deputy Prime Minister reproduced in the exhibit of the affidavit of the applicant should only be considered in the light of section 5 of the Sedition Act, 1948 in that the Public Prosecutor has power to designate any court within Malaysia to be the court of trial in the first instance. This section should however be construed without prejudice to the power of this court to make an order of transfer under section 417 of the Criminal Procedure Code if it is considered just to do so.

More specifically, the decision on this application may be made after considering paragraph (b) of section 417 of the Criminal Procedure Code that is, if it appears to the court that some question of law of *unusual difficulty* is likely to arise the court may order that the case be transferred to and tried before itself. The use of the word "unusual" in that paragraph would seem to me to indicate that the difficulty in relation to the law involved must be such that either the question of law is one which is unique or out of the usual or ordinary or one which has not been dealt with by any court before. The fact that a constitutional point of great importance is *expected* to be raised during the trial is not sufficient ground to transfer under this section. The exercise of the power based upon such a ground would in my opinion result in absurdity because it will at least theoretically be possible to raise some constitutional question in a good number of criminal cases where the liberty or rights of the subject are involved. It may be argued, although I have my doubts, that paragraph (b) of section 417 may apply to a first prosecution under the new amendment to section 3 of the Sedition Act, 1948; but you cannot say that of this case either. As such I have gone through the affidavits of the applicant and the respondent and found nothing to satisfy section 417 of the Criminal Procedure Code for an order of transfer to be justified.

It is my view therefore that the application as it stands has no merit and should be dismissed.

*Application dismissed.*

Solicitors: *Yeap & Co.*